

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

THE HIPSAVER COMPANY, INC.,

Plaintiff,

V.

J.T. POSEY COMPANY,

Defendant.

AND RELATED COUNTERCLAIM.

Civil Action No. 05-10917 PBS

**OPPOSITION OF DEFENDANT AND COUNTERCLAIMANT  
J.T. POSEY COMPANY, INC. TO PLAINTIFF'S  
MOTION TO STRIKE OBJECTIONS**

Defendant and Counterclaimant J.T. Posey Company, Inc. (“Posey”) opposes the motion of The HipSaver Company, Inc. (“HipSaver”) to strike Posey’s evidentiary objections to the declaration of Edward Goodwin (D.N. 209) which HipSaver filed in opposition to Posey’s motions for summary judgment on HipSaver’s complaint.

As is set forth in the objections, the Goodwin declaration contains numerous averments that, among other things, (i) are not based upon Mr. Goodwin's personal knowledge, (ii) lack foundation, and (iii) constitute inadmissible hearsay. In addition, the declaration contains numerous other averments that contradict Mr. Goodwin's sworn deposition and HipSaver's sworn interrogatory responses. As a consequence, Posey's objections to the Goodwin are well-taken.

Thus, as Posey has requested in a pending motion (D.N. 208), rather than strike Posey's objections, to the extent the Court deems it necessary, the Court should either extend the page

limitations on reply briefs so as to consider the objections as part of Posey's reply brief or, in the alternative, strike the declaration on the grounds that it does not comply with the Federal Rules of Evidence and because it is a sham attempt to create disputed issues of material fact.

For the foregoing reasons, HipSaver's motion to strike Posey's objections should be denied.

Dated: February 27, 2007

J.T. POSEY COMPANY

By its attorneys,

/s/ Douglas H. Morseburg  
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**CERTIFICATE OF SERVICE**

I certify that this document has been filed through the Electronic Case Filing System of the United States District Court for the District of Massachusetts and will be served electronically by the court to the Registered Participants identified in the Notice of Electronic filing.

/s/ Donald K. Piper

Donald K. Piper

February 27, 2007